

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

SIDNEY SCHEPENS and GLADYS	§	
SCHEPENS, d/b/a	§	PLAINTIFFS
QUALITY AUTO SUPPLY	§	
	§	
v.	§	CAUSE NO. 1:05CV269
	§	
BELLSOUTH ADVERTISING AND	§	
PUBLISHING CORP, INC. and	§	
ONE SOURCE TELECOM GROUP, INC.	§	DEFENDANTS

MEMORANDUM OPINION AND ORDER
GRANTING DEFENDANT ONE SOURCE
TELECOM GROUP, INC.'S MOTION TO DISMISS
BREACH OF CONTRACT CLAIMS

THE MATTER BEFORE THE COURT is the Motion to Dismiss of Defendant One Source Telecom Group, Inc. [15]. The Plaintiffs have filed their response. After due consideration of the submissions and the relevant law, it is the opinion of the Court that the Motion should be granted.

DISCUSSION

The individual Plaintiffs in this case operate K&S Auto Supply, d/b/a Quality Auto Supply. Their corporation, K&S Auto Supply, Inc., is also a named Plaintiff.¹ It appears from the attachments to the Complaint that Plaintiff K&S Auto Supply, Inc. contracted for phone service with BellSouth through One Source Telecom Group, Inc., its “Authorized Platinum Partner.” Plaintiffs allege breach of contract and negligence causes of action against both BellSouth Advertising and Publishing Corp., Inc. and One Source for the incorrect listing of their name in the 2002 phonebook as K&S Auto Supply rather than Quality Auto Supply.

¹ Although it is not completely clear, a fair reading of the Complaint indicates that the corporate Plaintiff is intended to be named and included as a litigant in this action.

Except for the inclusion of the corporate Plaintiff, this Complaint is identical to the complaint filed in this Court under cause no. 1:04cv618; *Sidney Schepens and Gladys Schepens, d/b/a Quality Auto Supply v. BellSouth Advertising and Publishing Corp, Inc. and One Source Telecom Group, Inc.* In that case, the Court granted a motion to dismiss filed by One Source Telecom Group, Inc. because the contract attached to the complaint did not refer to One Source Telecom Group or a phonebook listing. The Court therefore concluded that the Plaintiffs' allegation of breach of contract against One Source Telecom Group was not well-pleaded and should be dismissed. One Source Telecom Group now requests dismissal of the same claim for the same reasons.

STANDARD FOR MOTION TO DISMISS

In considering a motion to dismiss for failure to state a claim under Rule 12(b)(6), the district court must accept all well-pleaded facts as true and view them in the light most favorable to the plaintiff. *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996), citing *McCartney v. First City Bank*, 970 F.2d 45, 47 (5th Cir.1992). "[T]he court may not look beyond the pleadings in ruling on the motion." *Baker*, 75 F.3d at 197. The contract attached to the Complaint is considered part of the pleading because it is central to the cause of action for breach of contract. *Sennett v. U.S. Fidelity & Guar. Co.*, 757 So.2d 206, 209 (Miss. 2000).

THE BREACH OF CONTRACT CLAIM:

Plaintiffs contend that their business had been listed in the phonebook for 24 years as Quality Auto Supply, but in the fall of 2002 they were listed as K&S Auto Supply, contrary to their wishes and their contract with BellSouth. They allege that this caused a decrease in their business in the amount of \$10,000.00 a month. One Source Telecom Group, Inc. seeks dismissal

of the breach of contract claim against it, asserting that the contract attached to Plaintiffs' Complaint is for phone service and has nothing to do with Plaintiffs' listing in the phone book. One Source also alleges that the individual Plaintiffs lack standing to bring these claims because the contract was entered into by the corporate Plaintiff.

The Court must view the facts in the light most favorable to the Plaintiffs, and take their well-pleaded facts as true. The Plaintiffs' opposition to the Motion to Dismiss is not helpful in resolving these matters. However, the Court notes that the contract at issue appears to be one for phone service between a BellSouth entity and the corporate Plaintiff. One Source Telecom Group is not a signatory. Therefore, the Court must conclude that the Plaintiffs' breach of contract claims against One Source Telecom Group are not well-pleaded and should be dismissed. The Court notes that Plaintiffs' negligent misrepresentation and fraud claims were not addressed by One Source Telecom Group Inc.'s Motion to Dismiss, and therefore remain pending.

IT IS THEREFORE ORDERED AND ADJUDGED that the Motion to Dismiss of Defendant One Source Telecom Group, Inc. [15] is **GRANTED**. Plaintiffs' breach of contract claims against One Source Telecom Group, Inc. are **DISMISSED WITHOUT PREJUDICE**.

SO ORDERED AND ADJUDGED this the 16th day of March, 2006.

s/ *Louis Guirola, Jr.*
LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE